# RECENT IMPORTANT DECISIONS

AGENCY—HUSBAND AS AGENT OF WIFE IN TRANSFER OF REAL PROPERTY.—Plaintiff, a married woman, owned certain land in fee, having acquired it by descent. Under certain statutes a new road was laid out across her premises. She was not personally a party to the proceedings, she had never received any compensation for damages sustained, nor had she relinquished any right to the property. Her husband, however, had received from the county board $140 in settlement of all claims. This is a proceeding to restrain the commissioners until they give adequate compensation for the land. *Held,* Plaintiff entitled to the injunction sought. *Spurlock* v. *Dornan* (1904), — Mo. —, 81 S. W. Rep. 412.

The title to the land was held in fee, not as her separate estate. She might hire servants to make repairs or to perform services on the land, but she could not appoint an agent to dispose of it or to compromise any claim in relation thereto, not even though such agent be her husband. *MacFarland* v. *Heim,* 127 Mo. 355, 29 S. W. 1030, 48 Am. St. Rep. 629; *McCollum* v. *Boughton,* 132 Mo. 622, 33 S. W. 476, 34 S. W. 480, 35 L. R. A. 480. Some authorities go so far as to question the right of a married woman to dispose of her separate estate through an agent, STORY, AGENCY, Sec. 7, although most of them admit that such action is possible. *Weisbrod* v. *Railroad,* 18 Wis. 40; MECHEM, AGENCY, Sec. 63. This case is interesting because it announces as settled, so far as Missouri is concerned, a point of law that has given rise to a great deal of controversy. For example, it has been held that a statute giving a married woman power to convey after "separate examination" does not enable her to convey by attorney, *Sumner* v. *Conant,* 10 Vt. 9. Again, it has been held that a statute authorizing her to convey necessarily carries with it the power to convey by attorney. *Williams* v. *Paine,* 169 U. S. 55; *Morris* v. *Linton,* 61 Neb. 537, 85 N. W. 565. These points have been the subject of legislation in many states. Some statutes permit a married woman to convey by attorney if her husband joins in giving the power of attorney. Other statutes give her the power to appoint an agent, while some expressly authorize her to appoint her husband as attorney.

ASSIGNMENT OF INSURANCE POLICY—CHANGE OF BENEFICIARY.—Decedent prior to his marriage to plaintiff had a policy in a benevolent life insurance company in which defendant, his father, was named as beneficiary. After decedent's marriage he declared to his wife and in presence of others that the insurance was for her benefit, and that he had given it to her for her protection. He delivered the policy to her, and she retained it until after his death. During his last illness he attempted to write to the insurer to have transfer made, but was too weak to do so and died before the transfer was formally completed. There was a condition annexed to the policy requiring notice of assignment to be given to the insurer. *Held,* that such facts were sufficient to constitute a change of beneficiary entitling plaintiff to proceeds of policy. *Lockett* v. *Lockett* (1904), — Ky. —, 80 S. W. Rep. 8.

The condition requiring notice of assignment is generally found in mutual

benefit policies, and a compliance with it is essential to a change of beneficiary. None of the cases cited in support of the opinion is directly in point, being either decisions on fire insurance policies or regular life policies. The court were evidently controlled by the equity and justice of the particular case rather than the weight of judicial opinion. In *Supreme Conclave Royal Adelphi* v. *Capella,* 41 Fed. Rep. 1, the general rule given is that in making a change of beneficiary the insured is bound to do it in the manner pointed out by the policy and by-laws of the association, and any material deviation from this course will invalidate the transfer. *Association* v. *Brown,* 33 Fed. Rep. 11; *Supreme Lodge* v. *Nairn,* 60 Mich. 44; *McLaughlin* v. *McLaughlin,* 104 Cal. 171; *Ireland* v. *Ireland,* 42 Hun. 212; BACON, BENEFIT SOCIETIES AND LIFE INSURANCE, Sec. 305-10. There are three exceptions to the general rule, first, a waiver by company of strict compliance with its rules, *Martin* v. *Stubbings,* 126 Ill. 387; second, when beyond the power of insured to comply literally with the regulations, equity will treat the change as having been made. *A. O. U. W.* v. *Child,* 70 Mich. 163; third, if insured has done all in his power to change beneficiary, but dies before the new certificate is issued, equity will decree that to be done which ought to be done. *National American Association* v. *Kirgin,* 28 Mo. App. 80.

BANKS—DEPOSITS MADE BY INTESTATE IN TRUST FOR ANOTHER.—Intestate had been in the habit of depositing various sums of her own money in savings banks "in trust" for several different persons, among them the plaintiff, in trust for whom she had three separate accounts. Two of the accounts intestate had withdrawn, but the balance remaining due on the other was paid to plaintiff on settlement of the estate. Plaintiff never knew of the deposits until after the death of intestate. He now demands the amount of the sums that had been withdrawn, on the ground that an irrevocable trust had been established in his favor when the money was deposited. *Held,* that plaintiff could not recover, reversing the decision of the Appellate Division. *In re Totten* (1904), — N. Y. —, 71 N. E. Rep. 748.

The decisions in the New York courts in recent years on this important question have not been fully in accord; hence the court says: "It is necessary for us to settle the conflict by laying down such a rule as will best promote the interests of all the people in the state. After much reflection on the subject, guided by the principles established by our former decisions, we announce the following as our conclusion: A deposit by one person of his own money in his own name as trustee for another, standing alone, does not establish an irrevocable trust during the lifetime of the depositor. It is a tentative trust merely, revocable at will until the depositor dies or completes the gift in his lifetime by some unequivocal act or declaration, such as delivery of the pass-book or notice to the beneficiary." See *Beaver* v. *Beaver,* 117 N. Y. 421; *Matter of Bolin,* 136 N. Y. 177; *Haux* v. *Dry Dock Sav. Inst.,* 2 N. Y. App. Div. 165; also *Brabrook* v. *Boston Five Cent Sav. Bk.,* 104 Mass. 228; *Cummings* v. *Bramhall,* 120 Mass. 552. Contra, *Martin* v. *Funk,* 75 N. Y. 134; *Robinson* v. *Appleby,* 69 N. Y. App. Div. 509; *Bailey* v. *Mabie,* 95 N. Y. 206; *Minor* v. *Rogers,* 40 Conn. 512. See especially *Robertson* v. *McCarty,* 54 N. Y. App. Div. 103.